

## **ARCHITECTS SECTION MEETING**

### **MINUTES**

The Architects Section of the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects (APELSCIDLA Board) met on October 30, 2002, at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia, with the following members present:

John S. Clark, Jr.  
David L. May, Jr.

Board member Robert A. Boynton was not present at the meeting.

Staff present for all or part of the meeting were:

Karen W. O'Neal, Deputy Director of Regulatory Programs  
Mark N. Courtney, Assistant Director  
Trisha L. Henshaw, Administrative Assistant  
Bonnie Rhea Adams, Assistant Director for Post-Adjudication  
Susan Garbini, Legal Assistant

No representative was present from the Office of the Attorney General.

Finding a quorum of the Section present, Mr. May, Chair, called the meeting to order at 9:25 a.m.

#### **Call to Order**

Mr. Clark moved to approve the agenda as written. Mr. May seconded the motion which was unanimously approved by members Clark and May.

#### **Approval of Agenda**

Mr. Clark moved to approve the minutes from the May 1, 2002, Section meeting as written. Mr. May seconded the motion which was unanimously approved by members Clark and May.

#### **Approval of Minutes**

Duncan Abernathy, representative of the Virginia Society of the American Institute of Architects (VSAIA), spoke to the Section regarding § 54.1-404 of the Code of Virginia. This section of the Code addresses the Board's responsibilities, specifically the ability of the Board to adopt a code of professional practice and conduct that may address concerns regarding prohibition of solicitation or acceptance of work by professionals on any basis other than their qualifications for the work offered. Mr. Abernathy stated that he discussed a situation with the Regulatory Review Committee of the Board that concerns public entities that are requiring a professional

#### **Public Comment**

to provide free design services during the procurement process. Mr. Abernathy requested that the Board include a regulation regarding this issue.

Mr. Abernathy also stated that he spoke at a public hearing before the Board for Asbestos, Lead and Home Inspectors to request that an exemption for licensed architects and professional engineers be included in the home inspector draft regulations. Mr. Abernathy indicated that the home inspectors in attendance at the public hearing were against such an exemption. Mr. Abernathy stated that he would be submitting a request to the Board for a letter of support of such an exemption to be presented to the Board for Asbestos, Lead and Home Inspectors.

Finally, Mr. Abernathy asked if the Board made a decision at the June 6, 2002, Board meeting regarding the practice of interior design and landscape architecture by businesses registered with the Board to provide other professional services. Mr. Courtney indicated that the Board requested an article regarding this issue be including in the next newsletter.

Jonathan M. Murdoch-Kitt, Counsel to William E. Swarm in the matter of File Number 2002-00854, William E. Swarm, spoke to the Section. Mr. Murdoch-Kitt stated that Mr. Swarm has been a licensed architect since 1986 and during that time he has not had any complaints filed against him. Mr. Swarm was approached by Marl El Siragy, president of M & A Construction Company, to take the examination so that Mr. Swarm may serve as the designated employee of M & A Construction Company. Mr. Murdoch-Kitt indicated that Mr. Swarm never became a member of the company in the manner that he expected. According to Mr. Murdoch-Kitt's testimony, Mr. Swarm never performed work as an employee of M & A Construction Company. Mr. Swarm represented to the complainants that he was the principal of Atlantic Architecture, PC, and had a contract with the complainants under this company. The complainants did not mention Mr. Swarm in their initial complaint, they only included Mr. Swarm in a subsequent complaint once they discovered that Mr. Swarm was listed as the designated employee with M & A Construction Company. Mr. Murdoch-Kitt indicated that Mr. Swarm was not aware that Mr. El Siragy had listed Mr. Swarm as the Vice-President of M & A Construction Company. Mr. Swarm had verbally requested in 1996 that Mr. El Siragy remove his name from all records and information related to M & A Construction Company. Mr. Swarm's error was in not personally contacting the Board to remove his name from all records related to M & A Construction Company until November 2001. Mr. Murdoch-Kitt stated

**Jonathan M.  
Murdoch-Kitt,  
Counsel, File  
Number 2002-  
00854**

that Mr. Swarm had made an error of omission, not a misrepresentation; therefore, Mr. Swarm would like for the Section to recommend to the Board that a consent order be adopted that would impose a monetary penalty of \$1000, Board costs in the amount of \$300 and a requirement that Mr. Swarm complete 12 hours of continuing education for architects in contracting and ethics and provide proof of such to the Board within 12 months of the entry date of the consent order.

No other respondent, counsel for respondent or other representative, or participant without an appointment was present to speak before the Section.

Call for  
Respondent

In reference to File Number 2002-00854, William E. Swarm, the Section members reviewed the record from the Informal Fact-Finding Conference which consisted of the investigative file, transcript and exhibits, and summary and recommendation of the presiding Board member, as well as the presentation by Mr. Murdoch-Kitt and Mr. Swarm and the proposed Consent Order. After discussion, Mr. Clark moved to recommend to the Board to accept the Consent Order as proposed by Mr. Swarm. The Consent Order cites a violation of 18 VAC 10-20-710(A) of the Board's 1997 regulations and imposes the following sanctions: monetary penalty of \$1000 for the violation of the Board's regulation, Board costs in the amount of \$300, and completion of 12 hours of continuing education for architects in contracting and in ethics, certifying successful completion of these courses to the Board within 12 months of acceptance of the Consent Order. Mr. Clark further moved to recommend that failure to pay the penalty, costs, or to comply with all terms of the Consent Order within the specified time period shall result in the automatic suspension of Mr. \_\_\_\_\_'s license until such time as there is compliance with all terms of the Consent Order. Mr. May seconded the motion which was unanimously approved by members Clark and May.

File Number  
2002-00854,  
William E.  
Swarm

In regards to File Number 2002-00192, Gary M. Zickafoose, the Section members reviewed the Consent Order as seen and agreed to by Mr. Zickafoose. Mr. May moved to recommend to the Board to accept the Consent Order, which cites a violation of 18 VAC 10-20-740(D) of the Board's 1999 regulations. For this violation, no sanction is imposed. Mr. Clark seconded the motion which was unanimously approved by members Clark and May.

File Number  
2002-00192,  
Gary M.  
Zickafoose

The Section members reviewed a request for the Section's opinion from Kathryn Prigmore, former Board member and member of the National Council for Architectural Registration Boards (NCARB) Broadly Experienced Architect (BEA) Committee. Ms. Prigmore indicated that the BEA Committee has been asked to analyze whether NCARB should reduce the number of years of experience an architect needs before being considered for certification under the program. Ms. Prigmore asked how the Section feels about this matter and indicated that this issue will be discussed at the next BEA meeting with the intent of suggesting a change to the length of time be put forth before the member boards as a resolution at the NCARB Annual Meeting in June 2003. After discussion, the Section members agreed by consensus to obtain more information so that a decision can be made on this matter.

**Discussion of  
Broadly  
Experienced  
Architect  
Committee**

The Section members were provided with information from Mr. Courtney regarding the review of disciplinary and application files at Section meetings. Mr. Courtney indicated that due to Enforcement issues related to scheduling Informal Fact-Finding Conferences, budget constraints, and statutory requirements, the Sections of the Board needs to consider eliminating review of disciplinary and application files at the Section meetings. Mr. May expressed several concerns regarding this issue and Mr. Clark was in favor of the concept.

**Discussion of  
Disciplinary  
and Application  
Files**

The Section members were provided with Part III of the draft regulations prepared by the Regulatory Review Committee of the Board. Mr. Courtney pointed out several items that have been changed. The regulations prepared by the Committee will be brought before the APELSCIDLA Board at its meeting on December 11, 2002, to be adopted as draft regulations. Mr. Courtney also notified the Section members that due to changes within the Office of the Attorney General, the new Board counsel is Ellen Coates.

**Discussion of  
Information  
from  
Regulatory  
Review  
Committee**

Mr. Courtney and Mr. May provided information regarding the NCARB Annual Meeting held in Boston, Massachusetts, from June 26 to June 30, 2002. Mr. Courtney also provided Mr. Clark with the resolutions that were voted upon at the Annual Meeting, as well as the results of those votes, as Mr. Clark was unable to attend the Annual Meeting. Mr. Courtney also provided information regarding the Architectural Registration Examination (ARE) Administration Task Force that he has served on for the past year and a half.

**Report from  
NCARB  
Annual Meeting**

Mr. Courtney provided the Section members with various memorandums and notices received by the Board office from NCARB during the last two quarters.

Quarterly  
Information  
from NCARB

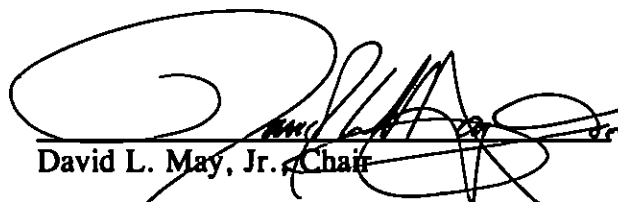
Mr. May asked that the Board send a get-well card to Mr. Boynton as he recovers from surgery.

Other Business

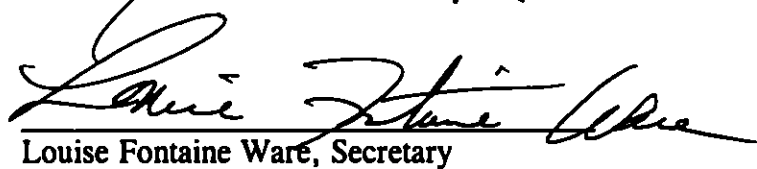
Conflict of Interest forms were completed by all members present.

Conflict of  
Interest Forms  
Adjourn

There being no further business, the meeting was adjourned at 11:50 a.m.



David L. May, Jr., Chair



Louise Fontaine Ware, Secretary

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Custodian of Records